UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STATE OF NEW JERSEY, *Plaintiff*, v. UNITED STATES DEPARTMENT OF TRANSPORTATION, *et al.*, *Defendants*, and METROPOLITAN TRANSPORTATION AUTHORITY, *et al.*, *Defendant-Intervenor*.	No. 23-3885 (LMG-LDW)

DEFENDANTS' NOTICE OF ISSUANCE OF RE-EVALUATION AND POSITION ON LITIGATION STATUS

Defendants[1] file this notice to inform the Court as to the status of re-evaluation and provide their position on the status of the litigation. First, the Project Sponsors[2] for the Manhattan Central Business District Tolling Program ("the Project") requested that the Federal Highway Administration ("FHWA") proceed with the next step in the agency's review under the National Environmental Policy Act ("NEPA") and complete the on-going re-evaluation of the May 5, 2023, Final Environmental Assessment ("EA"). In addition, the Project Sponsors

[1] Defendants are the U.S. Department of Transportation, the Federal Highway Administration, Shailen Bhatt, in his official capacity as Administrator of FHWA, and Richard J. Marquis, in his official capacity as Division Administrator of the New York Division of FHWA.

[2] The Project Sponsors are the Metropolitan Transportation Authority, the New York Department of Transportation, and the New York City Department of Transportation.

informed FHWA that they believe this litigation should proceed. Accordingly, on June 14, 2024, FHWA issued a Re-Evaluation finding that the conclusions in the Final EA remain valid in light of the final tolling schedule adopted by the Metropolitan Transportation Authority ("MTA"), and thus that no further environmental review is warranted.[3]

Second, and notwithstanding New York Governor Kathleen Hochul's announcement of a "pause" in the implementation of the Project, the lawsuit is not moot. Plaintiff's lawsuit challenges FHWA's issuance of the Final EA and Finding of No Significant Impact ("FONSI") under NEPA, 42 U.S.C. § 4331 *et seq*. Given that the Re-Evaluation confirms the results of the Final EA and FONSI, the Court can order meaningful relief with respect to Plaintiff's claims. *See, e.g.*, *Sierra Club v. Fed. Energy Regul. Comm'n*, 827 F.3d 36, 45 (D.C. Cir. 2016) (explaining that "because the [agency's] NEPA analysis was an integral component of authorizing the [project] . . . and because, if error occurred, the [agency] might come to a different result on remand, the lawfulness of the [agency's] action remains very much a live legal issue"); *cf. West v. Horner*, 810 F. Supp. 2d 228, 234 (D.D.C. 2011) (holding claims moot only where FHWA explicitly "rescinded" NEPA approval for project and project sponsor withdrew application).

Accordingly, Defendants believe the Court should resolve the pending cross-motions for summary judgment in the normal course.

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[3] The Re-Evaluation is available on MTA's website at https://new.mta.info/project/CBDTP/reevaluation. Defendants provide this notice in compliance with the Court's request to provide an update upon completion of the re-evaluation process. *See* Apr. 4, 2024 Tr. 15:5-8. In doing so, Defendants do not concede that the Re-Evaluation is part of the administrative record before the Court with respect to Plaintiff's current claims. *See Del. Dep't of Nat. Res. & Env't Control v. U.S. Army Corps of Eng'rs*, 722 F. Supp. 2d 535, 542 (D. Del. 2010) ("The focus of the APA review is, of course, the administrative record that existed at the time of the challenged agency action.").

Respectfully submitted this 14th day of June, 2024,

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